IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9142 OF 2005

Sou. Sulochana Pengat Sudhakaran ..Petitioner.

V/s.

Sukhdeo Murlidhar Jadhav (since deceased) through L.R.'s ..Respondents.

Ms.P.P. Tendulkar i/b. M.S. Karnik for petitioner.

Mr.Sachin D.Kadam for respondent Nos.1A to 1 E, 2 & 3.

CORAM : R.M.SAVANT, J.

DATED : 6TH JUNE, 2007.

P.C. :-

. Rule. By consent of the parties made returnable forthwith. Heard learned counsel for the parties.

2. This petition under Article 226 of the Constitution of India impugning the order dated 17/08/2005 passed by the IVth Ad-hoc Additional District Judge, Nashik in Civil Miscellaneous Application No.21/2004. By the said order, the said application filed by the petitioner for condonation of delay has been rejected.

3. The factual matrix involved in this case is

as under:-

The petitioner is the original plaintiff in Regular Civil Suit No.1244 of 2000 filed in the Court of Civil Judge, J.D. Nashik for declaration and injunction. The said suit was dismissed on 18/7/2003. The petitioner received the certified copy on 9/9/2003. Thereafter, the appeal challenging the said dismissal was filed on 20/12/2004. Since the appeal was belated, an application for condonation of delay was filed. The said application seems to be dismissed on 17/8/2005 by the IV Ad-hoc Additional District Judge, Nashik.

4. I have heard learned counsel for the petitioner and respondents. On behalf of the petitioner, learned counsel contends that Advocate for the petitioner, who was appellant in the appeal was not well for a considerable period of time. Therefore, though the papers were handed over to the said Advocate, the appeal could not be filed in time. Learned counsel further contends that as soon as the Advocate was in a position to file the said appeal, the same was filed and the delay condonation application was also filed by the Advocate as the appeal was already belated. It is further contended that a technical view ought not to be taken and the appeal

ought not to have been dismissed on the ground that the application was not signed by the petitioner.

5. On the other hand, it is contended on behalf of the respondents that since the petitioner had not signed the application for condonation of delay, it was not a proper application in the eyes of law and, therefore, the learned Judge had rightly rejected the said application for condonation of delay on the said ground.

6. I have given my anxious consideration to the rival contentions. Though, it is true that the application for condonation of delay has not been signed by the petitioner, it is an admitted position that the same was signed by the Advocate for petitioner. The same was signed in view of the peculiar facts of the case, as the Advocate was already handed over the papers for filing of the appeal, but on account of his illness the same could not be filed within limitation and, therefore, the delay condonation application was signed by the Advocate to avoid further delay.

7. The trial Court has rejected the said application only on the ground that it was not signed

by the petitioner. In my view, the said ground is a hyper technical ground. In matters of condonation of delay, it is well settled that a hyper technical approach should be avoided and an approach which furthers the cause of substantial justice should be adopted.In view of the fact that the application has been rejected solely on the ground that it has not been signed by the petitioner, in my view the order dated 17/8/2005 has to be quashed and set aside and the delay in filing the appeal deserves to be condoned.

8. However, in the interest of justice, the petitioner is directed to pay costs of Rs.2,000/- to the respondents to be paid within 3 weeks from today. Appeal to be numbered after the petitioner produces evidence of having paid the costs to the respondents.

9. If the costs are not paid, this petition would stand dismissed.

10. Rule is accordingly made absolute in the aforesaid terms with no order as to costs.

(R.M.SAVANT, J.)